

Headquarters
Department of the Army
Washington, DC
31 October 1996

Civilian Personnel

Headquarters Department of the Army
Employee Administrative Grievance System

Applicability. This memorandum applies to Headquarters, Department of the Army and its field operating agencies.

Proponent and exception authority. The proponent of this memorandum is the Administrative Assistant to the Secretary of the Army. The Administrative Assistant has the authority to approve exceptions to this memorandum which are consistent with controlling law and regulation. The Administrative Assistant may delegate this authority in writing to a division chief within the proponent agency in the grade of colonel or civilian equivalent.

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Section I General

1. Purpose

This system implements the Department of Defense (DoD) Administrative Grievance System (AGS) for the Headquarters, Department of the Army (HQDA).

2. References

- a. 5 Code of Federal Regulations, Part 771, "Agency Administrative Grievance System."
- b. OASD Memorandum of 20 December 1995, Subject: Labor Management Relations and Administrative Grievance System

3. Explanation of abbreviations and terms

Abbreviations and special terms used in this memorandum are explained in the glossary.

4. Responsibilities

- a. The Administrative Assistant to the Secretary of the Army (AASA) will—
 - (1) Ensure the full and effective implementation of the Administrative Grievance System HQDA.
 - (2) Provide policy guidance to supported elements.
 - (3) Provide advisory services to supported elements.
 - (4) Establish and maintain grievance files.
- b. Principal Officials of Headquarters, Department of the Army will—
 - (1) Identify to Personnel and Employment Service–Washington (P&ES–W), Labor Management and Employee Relations Division (LMERD), an official to serve as the Designated Grievance Receiver (DGR) for the activity.
 - (2) Authorize the heads of Field Operating Agencies (FOA) for which they are responsible, to designate an official to serve as the DGR for that FOA.
 - (3) Ensure that employees are advised of this system.
 - (4) Ensure that grievances are considered fairly and impartially and processed expeditiously.
- c. The Designated Grievance Receiver will—
 - (1) Determine the best method to resolve grievances.
 - (2) Make decisions concerning grievances.

Section II Administrative Grievance System

5. Coverage

The AGS applies to current appropriated fund non-bargaining unit employees. It also covers former DoD employees with respect to matters arising during their previous employment at the activity, provided that a remedy is available consistent with applicable laws and regulations. The AGS covers bargaining unit employees when a matter covered by the AGS cannot be grieved under their negotiated grievance procedure (NGP), either because a NGP is not in effect at the time or because the NGP does not cover the matter grieved. The AGS does not cover reinstatement and transfer eligibles who have applied for a position under a merit promotion program, non-citizens recruited overseas and applied to overseas positions, or non-appropriated fund (NAF) employees.

6. Policy

Employees are entitled to present grievances and communicate with supervisors, managers, and officials in their servicing Civilian Personnel Advisory Center (CPAC) without restraint, interference, coercion, discrimination, or reprisal. Grievances shall be considered fairly and impartially, and processed expeditiously. Employees may be accompanied, represented, and advised by a representative of their own choosing except

as follows. As determined by the grievance deciding official, the proposed representative's service must not result in a conflict or apparent conflict of interest or position (such as a member of the Personnel and Employment Service–Washington (P&ES–W), Equal Employment Opportunity Officer or investigator or examiner); or whose release from his/her official position would cause unreasonable costs to the government; or whose priority work assignments preclude his/her release. A grieving employee and his or her representative, shall have full access to relevant information (however, records will not be released if prohibited by law or regulation) and shall be permitted a reasonable amount of official duty time, if otherwise in a duty status, to present a grievance and to communicate with management and personnel officials. Employees may also be given a reasonable amount of official time to prepare a grievance.

7. Subject Matter Exclusions

Any matter may be grieved under this procedure except those specifically excluded by the DoD grievance system. The exclusions are listed in appendix A.

8. Alternative Dispute Resolution (ADR)

ADR techniques encompass a broad range of informal, non-adversarial techniques for settling employee-management disagreements. These techniques emphasize problem-solving as a means of dealing with conflict and seeking solutions that are satisfactory to all parties. Facilitation is an ADR technique which has been particularly successful and will be used by HQDA. Facilitation is the process of providing procedural assistance to the disputants to resolve issues in controversy. The facilitator participates in group discussions to improve communication encourage informal discussion, improve relationships and build trust. The facilitator is a neutral third party who assists the parties in resolving the dispute themselves. The facilitator remains impartial concerning the issues under discussion and focus only on procedural assistance. The facilitator is essentially a process expert, who conducts meetings and coordinates discussions. Generally, facilitators do not get involved in the substantive aspects of the dispute. Their job is to create a problem-solving atmosphere in which the parties are able to resolve their differences. Facilitators help the parties define clear statements of desired outcomes, help decide whom to involve in meetings, assist in the development of meeting agendas, draw people out and keep discussions on track, propose strategies for problem solving, organize information produced, and help plan future meetings and implementation of decisions reached. Facilitation may be the appropriate form of ADR technique under the following circumstances:

- a.* The parties are not polarized.
- b.* Communication is the problem, possibly due to personality conflicts.
- c.* The parties trust each other enough to develop a mutually acceptable solution.
- d.* The issues are unclear or undefined.
- e.* The parties will have an on-going relationship after settlement of the dispute at hand.
- f.* If individuals involved in a dispute are interested in the facilitation process they should contact the Advisory Services Branch, Labor Management and Employee Relations Division, Personnel and Employment Service–Washington at (703) 697–0778. The servicing Employee Relations Specialist will provide assistance in identifying a facilitator.

9. Procedures

The administrative grievance process is a two level process; the problem-solving procedure and the administrative grievance procedure.

a. Level 1: The Problem-Solving Procedure.

(1) An employee may informally present any work-related problem to his or her immediate supervisor before filing a formal grievance. If the matter involves a matter or action directly involving the immediate supervisor, the employee may present it to the next higher level in his/her supervisory chain or to an official having the authority to remedy the situation.

(2) The problem must be presented within 15 days of the date of the act or event giving rise to the

problem, or the date the employee became aware of (or reasonably should have become aware of) the act or event. When calculating time limits under the AGS, the day of an action or receipt of a document is not counted. The last day of the time limit is counted unless it is a Saturday, a Sunday, a legal holiday, or a day on which the employee is not regularly scheduled to work. In those cases, the last day of the time limit shall be moved to the next regularly scheduled work day. The employee may present a matter of concern regarding a continuing practice or condition at any time. Note: All timeframes given in this procedure are calendar days.

(3) Supervisors who receive an informally presented problem must consider the merits of an employee's problem regardless of the matter involved. A bona fide attempt to resolve the issue must be made. If the issue raised is outside the supervisor's authority and responsibility, he/she must contact the officials who may be able to resolve the issue of dissatisfaction. Supervisors are encouraged to contact their servicing Employee Relations Specialist for advice in processing the problem or to assist with the facilitation process.

(4) At a minimum, supervisors must meet with the employee and representative, if any, and prepare a memorandum for record (MFR) of the meeting and any subsequent meetings. The MFR will briefly summarize the problem, the consideration given it, the conclusions reached, and the course of action decided on. The meeting should be conducted as soon as possible but no later than 15 days from receipt of the problem. All individuals involved in the meeting(s) should be given a copy of the MFR(s). Any decision which requires a personnel action must be coordinated with P&ES-W (LMERD), before a final decision is rendered. If the issues are not resolved during the final meeting, the MFR will state that the employee may submit a formal grievance in accordance with paragraph 9.b. within 15 days from receipt of the MFR to the designated grievance receiver for the activity.

(5) Normally, this problem-solving procedure should be concluded within 30 calendar days of the act or event. Responses to a problem presented orally may be oral or written. Where the decision is to respond orally, the supervisor should prepare a memorandum documenting the matter and give the employee a copy. If the problem is presented in writing, the decision will be given in same or related matter.

b. Level 2: The Administrative Grievance Procedures.

(1) Each Principal Official reporting directly to either the Secretary of the Army or the Chief of Staff will designate an individual, such as the Deputy, Assistant Deputy, or Executive Officer to serve as the Designated Grievance Receiver (DGR) for the activity. Except as indicated below, the DGR will be responsible for receiving and resolving all formal grievances filed by employees in or under that activity. In addition, these activity heads may authorize the heads of FOAs for which they are responsible to designate an official within the FOA to serve as DGR for that FOA. The functions of the DGR are identified in Appendix B. An alternate DGR should be appointed to receive and resolve grievances concerning actions taken personally by the DGR. The Administrative Assistant to the Secretary of the Army will designate an official to serve as the DGR for receiving and resolving grievances filed by employees of all activities other than those identified in the preceding paragraph. This responsibility may be redelegated. Principal officials and heads of subordinate activities will notify the LMERD in writing, of the individual chosen to be the agency DGR.

(2) An employee may file a formal grievance with the DGR when a problem is not resolved during the problem-solving procedure, or where the employee chooses to bypass that procedure and invoke the administrative grievance procedure. If the employee used the problem-solving procedure, the employee must submit the grievance no later than 15 days from the receipt of the MFR. Where the employee raised the matter initially as a formal grievance, the 15-day time limit described in paragraph 9(a)(2) of the problem-solving procedure above applies.

(3) Employees shall be given the right to represent themselves or to be represented by an individual of their own choice in accordance with established policy (paragraph 6), in filing a grievance. The DGR may disallow the choice of a representative if it would result in a conflict of interest or position, conflict with mission priorities, or result in unreasonable cost to the activity.

(4) An employee's formal grievance must be signed, dated, contain a sufficiently detailed statement of the issue(s) involved, and the personal relief sought; must include copies of any relevant documents

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supporting the issues raised in the grievance; and the name, address and telephone number of the employee's representative, if any.

(5) The employee will state in writing that he/she has not filed an EEO complaint, an appeal, or another grievance concerning the same or related matter.

(6) The DGR will determine whether to join similar or identical grievances; whether to require an investigation and how it shall be conducted; whether to allow the grievant's requested representative; and how much official time shall be granted to the employee and the employee's representative, if any.

(7) The DGR may also designate an individual as a factfinder to investigate a grievance and to make recommendations concerning its disposition. The factfinder must not have been involved in the grievance or the matter being grieved or occupy a position subordinate to any official involved in the matter. The DGR should try to resolve the grievance and determine which method to use in obtaining and assessing sufficient information on which to base a decision. The DGR may request the services of the Office of Complaint Investigations (OCI), on a cost reimbursement basis (Attachment C) to perform the investigation on his or her behalf. Costs will be paid by the organization against whom the grievance is filed. Among other options available to the DGR are: designate an investigating officer similar to AR 15-6; or conduct an inquiry himself/herself. Advice may be obtained from the P&ES-W (LMERD) as to various forms of ADR techniques that might be utilized at this phase of the procedure.

(8) A DGR's decision on the merits of the grievance is final and not subject to review. However, an employee may request an individual at the next higher management level to review a decision by the DGR to "cancel" a grievance. "Cancel" in this context means that a DGR has determined that the grievance is either untimely or falls outside the scope of the grievance procedure, i.e., threshold grievability determination. To provide for an objective review of the DGR's cancellation, the next management level or his/her designee should coordinate the final decision with the civilian personnel director, or his/her designee.

(9) A grievance or a portion of a grievance may also be canceled or temporarily suspended at the grievant's request; if the grievant or grievance is excluded from coverage; if the grievant fails to comply with applicable time limits or procedural requirements; or the employee raises the matter under another formal dispute resolution process under a different administrative forum.

(10) The DGR shall fully and fairly consider the grievance and issue a written decision, to include the basis for the decision. The decision shall be issued as soon as possible but normally no later than 60 days from the filing of the formal grievance. The DGR may extend the time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where an outside fact-finder is used in the process or for other good cause). However, a grievance decision should be rendered no more than 90 days from the filing of the grievance absent mutual agreement to extend this time limit to accommodate resolution of the dispute. If the deciding official fails to render a decision within 90 days absent mutual agreement, the grievant may request review by the next higher management level, not above the Principal Official concerned.

(11) Files shall be established and maintained in the Personnel and Employment Service-Washington for each formal grievance filed under the AGS and retained for four (4) years in accordance with applicable laws, regulations, and records retention schedules. The file will contain all documents or copies of documents related to the grievance.

10. Special Department of Army Grievance Procedures

a. Procedures for grievances involving rating, ranking, and referral under the DA career programs.

(1) The employee will submit the written grievance to the DGR at the activity level. That individual will send it to the career referral activity at the major command or HQDA level, depending upon where the alleged error occurred. The career referral activity, in coordination with the Career Program Manager or Functional Chief (or respective representative), will try to resolve the grievance.

(2) Within 15 days after receipt of the grievance, the referral activity will send its response through the grievant's activity commander to the grievant. The referral activity's decision is final.

b. Procedures for grievances involving Alcohol Drug Abuse Prevention and Control Program (ADAPCP) certification.

(1) When the only issue in a grievance is the denial, suspension, or revocation of a certification issued by the ADAPCP Clinical Certification Board, the activity will omit the problem-solving process. The formal grievance will be submitted by the grievant, in writing, to Commander, Army Medical Department Center and School, Behavioral Science Division, ATTN: HSHA-MB (Certification Program), 2250 Stanley Road, Fort Sam Houston, Texas 78234-6133. The Board will review the decision to deny, suspend, or revoke the certification. Within 45 days after receipt of the grievance, the Board will send its response to the grievant with a copy to the Clinical Director.

(2) If the grievant is not satisfied with the response, he or she may, within seven days of receiving the Board's response, inform the Board in writing that he or she requests that the grievance be investigated by the Office of Complaint Investigations (OCI). Notification will be timely, if mailed to the Board and postmarked not later than 7 days after receipt of the Board's response. The Board will forward the grievance to the proper OCI Regional Office for fact-finding and recommendations. The OCI report will be forwarded to the Director, U.S. Army Drug and Alcohol Operations Agency, 4501 Ford Avenue, Suite 320, Alexandria, Virginia 22302-1460. The Director, U.S. Army Drug and Alcohol Operations Agency will issue a final decision to the grievant, with a copy to the grievant's Clinical Director and to the Board, within 15 days of receipt of the OCI report. The Director, U.S. Army Drug and Alcohol Operations Agency's decision is final.

(3) U.S. Army Drug and Alcohol Operations Agency will fund OCI investigations involving ADAPCP certification under this paragraph.

c. Procedures for grievances that challenge decisions made or matters controlled by DA activities other than the grievant's local command.

(1) The employee will submit the written grievance to his/her servicing Civilian Personnel Advisory Center (CPAC). The employee must file the grievance within 15 days of the act or event or within 15 days after completion of the problem solving procedure. The CPAC will forward the grievance within 7 days to the DA activity that made the decision or has control over the matter being grieved.

(2) Within 30 days of receiving the grievance, the DA activity will issue a final decision through the servicing CPAC to the employee. Grievances involving the referral process for Senior Executive Service (SES) positions and SES position change actions not otherwise appealable will be referred to the HQDA Assistant Secretary of the Army, Manpower and Reserve Affairs, Senior Executive Service for processing.

Appendix A

Subject Matter Exclusions

A-1. Any matter may be grieved under this procedure, except as provided by 5 CFR 771.105(b) and (c) which preclude grievances over:

a. The content of established agency regulations and policy; any matter covered by a negotiated grievance procedure or subject to formal review and adjudication by the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), or the Equal Employment Opportunity Commission (EEOC); or any matter that the employee files under another review procedure, or reconsideration procedure, or dispute resolution process within DoD; and non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a non-competitive promotion.

b. Preliminary notice of an action that, if effected, would be covered under the grievance system or excluded from coverage under (a) above. The substance of an employee's performance elements, standards, or work objectives; determinations concerning awards, additional step increases, recruiting or relocation bonuses, retention allowances, physicians comparability or additional pay allowances, supervisory differentials, critical position pay, or dual compensation waivers; and any action taken under a voluntary, formal

agreement entered into by an employee involving geographic relocation or return from an overseas assignment.

c. Termination of a probationer, return of an employee serving supervisory or managerial probation to a non-supervisory or non-managerial position, or separation or termination of an employee during a trial period.

d. Termination or expiration of a time-limited excepted appointment, a term or temporary appointment or promotion, or a Senior Executive Service limited emergency or limited term appointment, on the date specified as a condition of employment at the time the appointment or promotion was made. The termination of a temporary or term promotion at a time other than in the preceding sentence, provided the employee was informed in advance of the temporary nature of the appointment or promotion and the employee was returned to his or her former position from which temporarily promoted or to a different position of equivalent grade and pay.

e. SES or Senior Level pay rate changes; performance evaluations and awards (including meritorious or distinguished executive rank awards), reassignment following receipt of an unsatisfactory rating, return to another pay system during the 1-year period of probation or for less than fully successful executive performance, or failure to be recertified, conditional recertification, or termination during probation for unacceptable performance.

f. Any action taken under 32 U.S.C. 709(e) involving National Guard Technicians; and any additional exclusions as requested by a DoD Component and approved by the DoD.

g. Non-preference eligible CIPMS employees, employed under 10 U.S.C. 1590, may grieve their removal, suspension, reduction in grade or pay, or furlough for 30 days or less, if they have completed one year of current continuous service in the same or similar position in the DoD under other than a temporary appointment of 2 years or less except for terminations for national security reasons. Impartial hearings in removal cases may be done on a reimbursable basis by the Defense Civilian Personnel Management Service's Office of Complaint Investigations.

Appendix B

Functions of Designated Grievance Receiver

B-1. The deciding official (i.e., Designated Grievance Receiver, another qualified official, or activity head), in consultation with the servicing Employee Relations Specialist (ERS), LMERD, determines the best method to resolve the grievance. This includes whether a factfinder is needed. The ERS will assist in the preparation of appropriate documentation whenever necessary throughout this process.

a. If it is decided that a factfinder is needed, the deciding official will identify a suitable individual for that purpose. No factfinder may be directly subordinate organizationally to an official who has been involved in the grievance, unless that official is the Secretary of the Army. To have been "involved", the official must have directly influenced (e.g., as rater, intermediate rater or senior rater) the decision regarding the matter being grieved or must have a personal interest in the matter, as opposed to performing some ministerial process such as referring the grievance to another official.

b. The deciding official authorizes the factfinder to act and prescribes the scope of inquiry or investigation which the factfinder is to make, to include a hearing (gathering of information) when one is appropriate in the judgment of the deciding official or the factfinder to help ascertain the circumstances surrounding the grievance.

c. The deciding official reviews the results of the fact-finding and makes the decision on the grievance.

Glossary

Section I Abbreviations

AA

Administrative Assistant

ADAPCP

Alcohol Drug Abuse Prevention and Control Program

ADR

Alternative Dispute Resolution

AGS

Administrative Grievance System

AR

Army Regulation

ASA

Assistant Secretary of the Army

CFR

Code of Federal Regulations

CIPMS

Civilian Intelligence Personnel Management System

CPAC

Civilian Personnel Advisory Center

DA

Department of the Army

DCSLOG

Deputy Chief of Staff for Logistics

DD

Department Defense

DGR

Designated Grievance Receiver

DoD

Department of Defense

EEO

Equal Employment Opportunity

EEOC

Equal Employment Opportunity Commission

ERS

Employee Relations Specialist

FLRA

Federal Labor Relations Authority

HQDA

Headquarters, Department of the Army

LMERD

Labor Management and Employee Relations Division

MFR

Memorandum For Record

MIPR

Military Interdepartmental Purchase Request

M&RA

Manpower and Reserve Affairs

MSPB

Merit Systems Protection Board

NGP

Negotiated Grievance Procedure

NPR

National Performance Review

OASD

Office of the Assistant Secretary of Defense

OCI

Office of Complaint Investigations

OPM

Office of Personnel Management

P&ES-W

Personnel and Employment Service–Washington

SES

Senior Executive Service

Section II Terms

Days

Calendar days.

Deciding Official

Management Official who resolves and renders decisions on grievances.

Facilitation

Process in which a person who is acceptable to all members of the group, substantively neutral, and has no decision-making authority intervenes to help a group improve the way it identifies and solves problems and makes decisions, in order to increase the group's effectiveness.

Grievance

Request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management and relates to the employment of the employee(s).

Personal relief

Specific remedy personally benefiting the grievant(s) and may not include disciplinary action or other action affecting another employee.

Previously involved

Official must have directly influenced the decision regarding the matter being grieved or must have a personal interest in the matter.

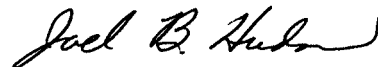
Section III Special Abbreviations and Terms

This section contains no entries.

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